

THIS ORDER IS NOT A
PRECEDENT OF THE
TTAB

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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Faint

December 10, 2020

Cancellation No. 92071980

Elevated Faith LLC

v.

Godisghl, LLC

**Before Cataldo, Shaw and Dunn,
Administrative Trademark Judges.**

By the Board:

This case now comes before the Board for consideration of Petitioner's motion, filed July 21, 2020, for reconsideration of that portion of the Board's July 14, 2020 decision¹ ("Prior Order") denying summary judgment on the ground of failure to function as a mark. The motion is contested.

Motion for Reconsideration

By its motion for reconsideration, Petitioner has submitted an additional 720 pages of website printouts "as further supplement to [its] previously submitted arguments and evidence."² Respondent argues the motion for reconsideration should

¹ 24 TTABVUE 12.

² 25 TTABVUE 3.

be denied as Petitioner “improperly” attempts to rely on new evidence expressly prohibited in Section 518.³

A motion for reconsideration under Trademark Rule 2.127(b) provides an opportunity for a party to point out any error the Board may have made in considering the matter initially. Such a motion is limited to demonstrating that based on the facts before it, and the applicable law, the Board’s ruling is in error and requires appropriate change. *Asustek Comput., Inc. v. Chengdu Westhouse Interactive Entm’t Co.*, 128 USPQ 2d 1470, 1470 (TTAB 2018). A motion for reconsideration may not properly be used to introduce additional evidence, nor should it be devoted simply to a reargument of the points presented in a brief on the original motion. *See Guess? IP Holder LP v. Knowlux LLC*, 116 USPQ2d 2018, 2019-20 (TTAB 2015) (reconsideration denied because there is no requirement that Board repeat or address all arguments in entertaining motion). *See also* TBMP § 518 (2020).

Petitioner’s motion for partial reconsideration is timely filed within one month from the date of the Prior Order. Trademark Rule 2.127(b), 37 C.F.R. § 2.127(b). Petitioner did not include a certificate of service with its filing as required by Trademark Rule 2.119(a), 37 C.F.R. § 2.119(a), and the Board could deny it on that basis. However, as Respondent has filed a response, the Board exercises its discretion to consider the motion.

³ Although Respondent cited to Section 516, it appears to be referring to Section 518 of the Trademark Board Manual of Procedure (TBMP). The manual is a guide to basic information for practice before the USPTO and does not modify, amend or substitute for any existing statutes, rules or decisional law and is not binding on the Board. *See Introduction TBMP* (2020).

Petitioner's request for reconsideration does not raise any new legal or evidentiary basis for concluding that the Board erred in denying Petitioner's motion for summary judgment and is **denied**. Petitioner was required to make its evidence of record at the time it filed its motion for summary judgment, not on motion for reconsideration. Further, the cumulative website printouts comprise "evidence" of little, if any probative value that unnecessarily adds size but not substance to the record on the motion.⁴ *See Am. Speech-Language-Hearing Assn. v. Nat'l Hearing Aid Soc.*, 224 USPQ 798, 800 (TTAB 1984) (finding record unwieldy and extremely damaging to Board's resources in terms of time and available workforce). That is, without contextual information on the sales of third-party goods bearing the mark, or information bearing on the popularity of the expression with consumers, the evidence, although voluminous, lacks probity. Parties are obligated to submit only such evidence as is relevant and probative.

Schedule

Proceedings are resumed. Dates are reset as set out below.

Initial Disclosures Due	1/8/2021
Expert Disclosures Due	2/21/2021
Discovery Closes	3/23/2021
Plaintiff's Pretrial Disclosures Due	5/7/2021
Plaintiff's 30-day Trial Period Ends	6/21/2021
Defendant's Pretrial Disclosures Due	7/6/2021
Defendant's 30-day Trial Period Ends	8/20/2021
Plaintiff's Rebuttal Disclosures Due	9/4/2021

⁴ As with a motion for summary judgment, evidence submitted in connection with this motion is of record only for consideration of the motion. To be considered at final hearing, all evidence must be properly introduced in evidence during the appropriate trial period. *See Land O' Lakes Inc. v. Hugunin*, 88 USPQ2d 1957, 1960 n.7 (TTAB 2008).

Plaintiff's 15-day Rebuttal Period Ends	10/4/2021
Plaintiff's Opening Brief Due	12/3/2021
Defendant's Brief Due	1/2/2022
Plaintiff's Reply Brief Due	1/17/2022
Request for Oral Hearing (optional) Due	1/27/2022

Generally, the Federal Rules of Evidence apply to Board trials. Trial testimony is taken and introduced out of the presence of the Board during the assigned testimony periods. The parties may stipulate to a wide variety of matters, and many requirements relevant to the trial phase of Board proceedings are set forth in Trademark Rules 2.121 through 2.125. These include pretrial disclosures, the manner and timing of taking testimony, matters in evidence, and the procedures for submitting and serving testimony and other evidence, including affidavits, declarations, deposition transcripts and stipulated evidence. Trial briefs shall be submitted in accordance with Trademark Rules 2.128(a) and (b). Oral argument at final hearing will be scheduled only upon the timely submission of a separate notice as allowed by Trademark Rule 2.129(a).
